
Remarks & Arguments

The application presently contains the following claims:

<i>Independent Claim #</i>	<i>Dependent Claim #s</i>
1	2-4, 6-10
11	12-23

The examiner represented that a telephone call was made to a colleague of the applicant's attorney, namely David Dureska on September 8, 2003, but did not result in an election being made. For the record, the undersigned attorney returned the telephone call of the examiner on September 9, 2003 and while no direct contact with the examiner was made, a voicemail message was left identifying the serial number of the application. To date, no telephone call has been returned.

35 U.S.C. §121 Rejections

The examiner has represented that the application as filed contained claims directed to the following patentably distinct species:

Specie 1: Figures 2-4;

Specie 2: Figures 5-21; and

Specie 3: Figures 22-26.

The examiner has further indicated that claim 1 is generic and that the applicant is required to elect a single disclosed species for prosecution on the merits. Pursuant to this request, the applicant elects specie 2, namely Figures 5-21, with traverse. Claims 1-4, and - 23 read on specie 2 while provisionally withdrawn claims 5 and 24-29 read on other identified species.

As represented by the examiner, upon the allowance of a generic claim, the applicant will be entitled to consideration of claims to additional species, which are already written in dependent form pursuant to 37 C.F.R. §1.141 (MPEP §809.02 -§809.02(e)). By identifying three patentably distinct species, the applicant's attorney reminds the examiner that double

patenting cannot be held in the instant situation.

The examiner is requested to provide reasons and/or examples to support his conclusions for restriction as required in the Guidelines provided in the MPEP §803. It is stated in that section that:

“For purposes of the initial requirement, a serious burden on the examiner may be prima facie shown if the examiner shows by appropriate explanation of separate classification, or separate status in the art, or a different field of search as defined in MPEP §802.02.”

At this point in the negotiation, it is respectfully submitted that this burden has not been met by the examiner.

Request for Reconsideration

Applicant believes that all independent claims clearly define over the prior art and that the distinctions between the present invention and the prior art would not have been obvious to one of ordinary skill in the art. Additionally, the remaining dependent claims, by the limitations contained in the base independent claims, are felt to be patentable over the prior art by virtue of their dependency from independent claims which distinguish over the prior art of record. All pending claims are thought to be allowable and reconsideration by the Examiner is respectfully requested.

It is respectfully submitted that no new additional searching will be required by the examiner in order to determine the patentability of the two additional species identified by the examiner, particularly in light of the recognition by the examiner that claim #1 is generic to all species.

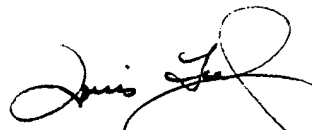
Fee Determination Record

A fee determination sheet is attached for this amendment response. The Commissioner is hereby authorized to charge any additional fee required to effect the filing of this document to Account No. 50-0983.

Conclusion

It is respectfully submitted that all references identified by the examiner have been distinguished in a non-obvious way. If the examiner believes that a telephonic conversation would facilitate a resolution of any and/or all of the outstanding issues pending in this application, then such a call is cordially invited at the convenience of the examiner.

Respectfully Submitted,
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